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September 25, 2024

Via ECF

Honorable Valerie Caproni
United States District Judge
United States District Court for the Southern District of New York
40 Foley Square, Room 240
New York, New York 10007

Re: *Michelle Grimmatt v. DMM Solutions, et al.*, 24 Civ. 5903 (VEC)

Dear Judge Caproni:

We are counsel for defendant DMM Solutions, Inc. (“DMM”). Pursuant to the Court’s Individual Practice Rules 2A and 2C, which state that a request for an extension of time must be made by letter, DMM hereby respectfully requests an extension of time from September 4, 2024 to October 18, 2024 to permit DMM to file a motion to compel arbitration. Plaintiff does not oppose this request and joins in DMM’s request to set the schedule set forth below.

On August 2, 2024, Plaintiff Michelle Grimmatt filed the Complaint. (ECF. No. 1). On August 5, 2024, the Court issued a Notice of Initial Pretrial Conference setting the initial conference for October 11, 2024. (ECF. No. 4). In advance of the initial conference, the parties were directed to submit a joint letter by October 3, 2024.

The Affidavit of Service filed by Plaintiff (ECF No. 8) states that DMM was served with the Summons and Complaint on August 14, 2024, via the New York Secretary of State. (ECF No. 8).¹ DMM only received the Summons and Complaint by mail on September 13, 2024. According

¹ Plaintiff represents that her process server initially attempted to serve DMM at the address provided in DMM’s most recent corporate filing with the Secretary of State but was

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to the tracking information for the mailing, the New York Secretary of State did not send the mailing until on or after September 4, 2024, the deadline for DMM's response to the Complaint.

DMM asserts that terms of service associated with the website at issue mandate arbitration. Plaintiff disagrees and takes the position that arbitration cannot be mandated given the circumstances and governing law. As DMM has only recently received the Complaint, DMM seeks additional time to prepare its anticipated motion to compel arbitration and for a stay of the proceedings while its motion is pending. Plaintiff intends to file an opposition to the anticipated to compel arbitration after the parties take discovery targeted to the issues raised in that motion.

Now that counsel for DMM has entered its appearance, the parties jointly request that the Court vacate its Order setting the initial conference for October 11, 2024 and its Show Cause Order dated September 23, 2024 (ECF No. 12) and enter the following schedule:

- DMM shall file a motion to compel arbitration on or before October 18, 2024.
- The parties shall be entitled to take discovery targeted to the issues raised in that motion, and Plaintiff shall file any opposition to the motion on or before January 20, 2025.
- DMM shall file its reply on January 30, 2025.
- If the Court denies DMM's motion to compel arbitration, then DMM will answer or otherwise move within 30 days after the Court's Order; plaintiff will file any response (if necessary) 30 days later; and DMM will file its reply seven days later.
- An initial conference, if needed, will be scheduled approximately 60 days after the Court's resolution of the motion to compel arbitration with the parties submitting their joint letter with a proposed schedule for the rest of the case one week prior.

The parties are in agreement regarding the foregoing proposed dates. This is DDM's first request for an adjournment or extension of time to answer or move.

Respectfully submitted,



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unsuccessful because the current resident at that address advised that DMM was unknown at that location.

Application GRANTED. The initial pretrial conference scheduled for October 11, 2024, is ADJOURNED *sine die*. The September 23, 2024, Order to Show Cause (Dkt. 12) is VACATED.

SO ORDERED.

 9/26/2024

HON. VALERIE CAPRONI
UNITED STATES DISTRICT JUDGE